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SENATE BILL 2976 By  
Ramsey

HOUSE BILL 3100  
By McCord

AN ACT to amend Tennessee Code Annotated, Title 55 and Title 70, relative to protection of natural resources and management of off-highway motor vehicle recreation in Tennessee.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 70, is amended by adding a new, appropriately designated chapter as follows:

SECTION 2. Short Title.

This chapter shall be known and may be cited as the "Tennessee Off-Highway Motor Vehicle Act."

SECTION 3. Purpose.

The number of off-highway motor vehicle users in the state is increasing while the number of recreational sites is rapidly declining. In the absence of a program to manage off-highway vehicle (OHV) use, a number of consequences are accruing to the state, including environmental damage and loss of economic prospects. Therefore, the general assembly finds the need to manage off-highway vehicles to maximize economic and recreational opportunities and to protect the environment of this state.

#### SECTION 4. Definitions:

(1) "Agency" means the Tennessee wildlife resources agency authorized pursuant to Title 70.

(2) "Commission" means the Tennessee wildlife resources commission authorized pursuant to Title 70.

(3) "Director" means the executive director of the Tennessee wildlife resources agency, the director's duly authorized representative and, in the event of the director's absence or a vacancy in the office of director, the deputy director of the Tennessee wildlife resources agency.

(4) "Dealer" means a person licensed by the proper state authorities to engage in the business of selling, offering to sell, soliciting or advertising the sale of motor vehicles or possessing motor vehicles for the purpose of resale either on that person's own account or on behalf of another, either as that person's primary business or incidental thereto, pursuant to Title 55.

(5) "Off-highway motor vehicle" means any motorized vehicle capable of traveling off highways within the state. This term includes all-terrain vehicles, off-road motorcycles, dune buggies, and other four-wheeled vehicles used primarily for off-road activities. This term does not include motor vehicles designed and used primarily for on-roadway activities; and

(6) "Owner" means the person in whose name the motor vehicle is titled.

#### SECTION 5. Registration Requirements.

(a) The owner of any off-highway motor vehicle shall annually register the vehicle with the director, in the manner prescribed by the director. Registration information shall include, but is not limited to, the name and address of the owner, the type of vehicle, the license number, if any, the vehicle identification number, proof of registration pursuant to

Title 55, if applicable, and that all applicable sales taxes and capital fees have been paid.

(b) Each person, upon filing the registration or renewal, shall pay a fee to the director.

(c) Upon the sale or transfer of an off-highway motor vehicle, the dealer may register the vehicle on behalf of, and in the name of, the vehicle owner, with the director, in the manner prescribed by the director. The dealer may also collect and pay the registration fee to the director on behalf of, and in the name of, the vehicle owner. Registration information shall include, but is not limited to, the name and address of the owner, the type of vehicle, the license number, if any, and the vehicle identification number.

(d) Registration shall not be required if the off-highway motor vehicle is used only on private property, with permission of the property owner, and for non-commercial purposes.

#### SECTION 6. Authority of the director.

The director is authorized to:

(1) Establish and implement an off-highway motor vehicle program by July 1, 2003

(2) Establish a registration program by July 1, 2002;

(3) In cooperation with other governmental agencies and vehicle dealers, develop an off-highway motor vehicle education program for existing and potential owners and users;

(4) Develop an off-highway motor vehicle education program designed specifically to educate dealers and owners of the state's state tax provisions and requirements and the penalties associated with the failure to pay such taxes;

(5) Establish safety requirements for riders on publicly-owned or leased lands. Riders under eighteen (18) years of age shall, at a minimum, wear a helmet and other protective gear as determined necessary by the director, when riding on publicly-owned or leased lands;

(6) Develop guidelines on the proper land selection criteria, trail design and maintenance, and best management practices for lands used for off-highway user purposes;

(7) Study, analyze and document the impacts of off-highway motor vehicles on surrounding habitat including habitat loss, resource damage, noise, and vehicle emissions;

(8) Acquire lands, through purchase or lease, for off-highway motor vehicle use. The director is encouraged to use property that is currently owned or leased by the state and that is appropriate for off-highway motor vehicle use before acquiring lands from private landowners;

(9) Develop and maintain a list of areas within the state that allow the use of off-highway motor vehicles by July 1, 2002;

(10) Enter into partnerships, contracts, and other management agreements, with other state, federal and local governments and private landowners to effectuate the purposes of this chapter;

(11) Make inspections and investigations, conduct studies and research or take such other action as may be necessary to carry out the provisions of this chapter, rules, and regulations issued pursuant thereto;

(12) Enter or authorize the director's agents to enter at all reasonable times upon any property other than dwelling places for the purpose of conducting investigations, conducting research or studies, or enforcing any of the provisions of this chapter; and

(13) Exercise general supervision over the administration and enforcement of this chapter and all rules and regulations promulgated thereunder.

#### SECTION 7. Authority of the commission.

The commission is authorized to:

(1) Establish and assess capital, registration and "day-use" rider fees;

(2) Promulgate rules and regulations as deemed reasonable and necessary to effectuate the purposes of this chapter. Such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

#### SECTION 8. Payment of capital fee.

(a) A dealer shall pay a capital fee quarterly to the department of revenue for any sale of an off-highway motor vehicle subject to the certificate of title and special identification device provisions of Tennessee Code Annotated, Title 55, in order to effectuate the purposes of this chapter.

(b) Before issuing a certificate of title for any off-highway motor vehicle, the county court clerk shall collect and pay a capital fee quarterly to the department of revenue for any sale of an off-highway motor vehicle subject to the certificate of title and special identification device provisions of Title 55, Chapter 3, to effectuate the purposes of this chapter. The county court clerk may assess a reasonable clerk's fee in addition to the capital fee.

(c) The capital fee shall be paid on the total purchase price of the off-highway motor vehicle including charges for the off-highway motor vehicle, freight, dealer preparation, and documentation but does not include charges for accessories and attachments not normally supplied by the manufacturer.

(d) The director shall establish a capital fee. The minimum capital fee shall be twenty-five dollars (\$25) and the maximum capital fee shall be seventy-five dollars (\$75)

based on the purchase price of the off-highway motor vehicle. The capital fee may be increased no more frequently than once every twelve (12) months by the director and shall not exceed the increase in the consumer price index (or successor index) since the last increase was imposed.

#### SECTION 9. Rider Fees.

The owner of an unregistered off-highway motor vehicle or a motor vehicle designed and used primarily for on-roadway activities shall pay a rider fee in order to ride or drive on publicly-owned or leased lands that allow off-highway motor vehicles. The rider fee may be established on a "per day" basis as deemed appropriate by the commission. The rider fee may be increased no more frequently than once every twelve (12) months by the director and shall not exceed the increase in the consumer price index (or successor index) since the last increase was imposed.

#### SECTION 10. Farm Use Excluded.

Off-highway motor vehicles purchased and approved exclusively for farm use pursuant to the requirements of Title 67, Chapter 4, shall not be subject to the payment of the capital fee or registration and registration fee requirements.

#### SECTION 11. Use of Funds.

(a) The funds received by the director and/or the department of revenue under this chapter shall be used exclusively for the purpose of funding the operation, management and enforcement of the off-highway motor vehicle programs authorized under this chapter. The director may use funds collected under this chapter to acquire by purchase, gift, grant, bequest, devise or lease, the fee or any lesser interest in land, development right, easement, covenant or other contractual right necessary to achieve the purposes of this chapter.

(b) It is the intent of the general assembly that the off-highway motor vehicle program be self-funded. Use of existing agency resources or funding to administer or enforce this program shall be a diversion of funds under Section 70-1-104.

#### SECTION 12. Technical Advisory Committee.

The director may appoint a technical advisory committee that shall advise the director on off-highway motor vehicles covered by this chapter. The number of committee members shall be determined by the director and shall be composed of representatives of federal, state, and local agencies and of appropriate private organizations, including not-for-profit organizations, dealers and private citizens. No member of this committee is entitled to a salary for duties performed as a member of the committee. No member is entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties.

#### SECTION 13. Violations, Penalty and Enforcement.

(a) Any person knowingly violating the provisions of this chapter commits a Class C misdemeanor. Any parent or guardian who knowingly permits a minor to operate an off-highway vehicle in violation of this chapter commits a Class C misdemeanor.

(b) The provisions of this chapter are enforceable and may be prosecuted by all officers of the wildlife resources agency, sheriffs and other peace officers charged with the enforcement of the laws of this state.

#### SECTION 14. Permission of owner of land to ride - Penalty for violations.

(a)(1) It is unlawful for any person to ride an off-highway motor vehicle upon the land of another without having first obtained the permission or approval of the owners of the land or of the person or persons in charge of the land and having authority from the owner to give such permission.

(2) A violation of this subsection is a Class C misdemeanor. Upon conviction for any violation of this subsection, the court may revoke the registration of the person so

convicted. Any registration so revoked shall be surrendered to the court and transmitted to the arresting officer, to be made a part of the prosecution record.

(b)(1)

(A) Notwithstanding the provisions of subsection (a), it is unlawful for any person to ride an off-highway motor vehicle upon lands posted with signs approved by the wildlife resources agency bearing the language "OHV Riding By Written Permission Only" and bearing the name of the landowner or the person in possession or control of such lands, without having first obtained the written permission of, or being accompanied by, the landowner or the person in possession or control of such lands and having authority from the owner to give such permission. Every person who rides an off-highway motor vehicle on such lands shall have such written permission in immediate possession at all times and shall display the same upon demand of an officer of the wildlife resources agency, sheriff or other peace officer charged with the enforcement of the laws of this state. Written permission shall not be required of the landowner, the landowner's dependents, the person in possession or control of such lands or the dependents of the person in possession or control of such lands.

(B) The signs posted pursuant to this subsection must be posted by one (1) of the following methods:

(i) The signs must be visible at all major points of ingress and at one hundred (100) yard intervals on the perimeter of the lands being posted; or

(ii) The signs must be visible at all major points of ingress and at two hundred fifty (250) yard intervals on the perimeter of the lands being posted accompanied by fluorescent visual markings. Such fluorescent visual markings must be at least one inch (1") wide and four (4") inches



long and shall be at fifty (50) yard intervals including the two hundred fifty (250) yard interval where signs are placed. The division of forestry, in cooperation with the department of agriculture and the wildlife resources agency, shall determine a unique universal paint color or colors to be used for these property boundary markings.

(C) Any person who posts signs pursuant to this subsection without authorization from the landowner is subject to the penalties imposed by subdivision (b)(2).

(2)

(A) A violation of this subsection is a Class C misdemeanor. Upon conviction for any violation of this subsection, the court may revoke the registration of the person convicted. Any license so revoked shall be surrendered to the court.

(B) The provisions of this subsection are enforceable and may be prosecuted by all officers of the wildlife resources agency, sheriffs and other peace officers charged with the enforcement of the laws of this state.

(C) An affidavit from the landowner or the person in possession or control of such lands stating that the property on which the violation occurred was properly posted in accordance with the provisions of this section shall create rebuttable presumption that such lands were properly posted.

SECTION 15. Tennessee Code Annotated, Section 70-7-104(2), is amended deleting the subdivision in its entirety and substituting instead the following:

(2) Injuries suffered in any case where permission to hunt, fish, trap, camp, hike, sightsee, cave, or any other legal purpose, except for off-road vehicle riding, was granted for a consideration other than the consideration, if any, paid to the landowner by the state, the federal government, or any other governmental agency; or

SECTION 16. For the purposes of developing and promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2002, the public welfare requiring it.